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every person affected by a rate law be given an opportunity to have his rights determined by the court before he incurs any liability to the penalties provided in the law? This is practically announcing the doctrine that a man has a right to break a law at least once to determine whether it is valid, or that the approval of the courts is an essential element in this class of laws.

J. S. M., Jr.

CONVERSION: EVIDENCE OF OWNERSHIP: PRIMA FACIE CASE.—In the case of *Cooper v. The Spring Valley Water Company*¹ plaintiff appealed from a judgment for the defendant entered upon a directed verdict. Plaintiff, as executor of one Dr. Lochhead, sued defendant for the conversion of certain shares of stock alleged to be the property of his testator. The alleged acts of conversion consisted in an unauthorized transfer of the stock upon the books of the defendant. Upon the trial of this action plaintiff introduced evidence to the effect that Dr. Lochhead, for several years prior to his death, was the owner of the stock, which stood in his name upon the defendant's books, and upon which he had received dividends, which had been collected by his attendant physician, Dr. Terrill, under an order given by plaintiff's testator. Upon the death of Dr. Lochhead, plaintiff gave notice to defendant that the indorsed certificate of stock was believed to be in the possession of Dr. Terrill, and forbade defendant to transfer the stock upon its books. After the receipt of this notice, Dr. Terrill presented this certificate to defendant for transfer to himself, which was refused. Subsequently the same certificate was presented by Dr. Terrill's pledgee, and a transfer was made to it.

On this appeal the judgment for defendant was affirmed, the court holding that the facts above set out do not constitute a prima facie case, upon the theory that Dr. Lochhead was the owner of the stock at the time of his death, and that it had been subsequently stolen by Dr. Terrill. In reaching this conclusion it seems that the court has placed undue emphasis upon an opening statement made by plaintiff's counsel, that plaintiff expected to prove by circumstantial evidence that Dr. Terrill had stolen the stock, and has treated this alleged theft as one of the principal issues of the case. If this had been a criminal proceeding against Dr. Terrill, then it would have been incumbent upon the prosecution to establish the theft, but for the purposes of this case, it seems that it was immaterial how Dr. Terrill got the stock, if he was not entitled to it.²

The court argues that possession of personal property is prima facie evidence of its ownership, and that when plaintiff alleged

¹ (Dec. 22, 1914), 19 Cal. App. Dec. 855. Rehearing granted Feb. 18, 1915.

² See *Cooper v. Spring Valley Water Co.* (1911), 16 Cal. App. 17, 22, 116 Pac. 298.

that the property was in the possession of Dr. Terrill, he thereby stated himself out of court. But the possession of Dr. Terrill was alleged to be wrongful, and if a like presumption were indulged in in every case where a plaintiff out of possession seeks to recover the value of his property, it would be very difficult for him to state a cause of action in trover.³

It is stated by the court that the fact that the stock stood in the name of Dr. Lochhead at the time of his death is no evidence, presumptive or otherwise, that Dr. Lochhead was the owner of the stock at that time. Undoubtedly as between the parties to a sale of stock, title may pass without a transfer upon the books of the company, but the fact that the stock stood in Dr. Lochhead's name and that he had received dividends upon it until the time of his death would show that he had been the owner, and it seems that plaintiff should have been entitled to the presumption that, until an assignment was shown, title continued in his testator, and that defendant should have been compelled to go into the evidence upon the issue of ownership.⁴

J. D. R.

CRIMINAL LAW: PUBLIC TRIAL: RIGHT OF COURT TO EXCLUDE PUBLIC FROM COURTROOM.—The question of what constitutes a public trial is one which has long vexed our courts. The Supreme Court of Idaho was recently confronted with the problem in the case of *State v. Johnson*.¹ In that case the defendant was convicted of the crime of assault with the intent to commit rape. The trial court excluded all spectators from the courtroom during the progress of the trial, and the defendant contended that he was thereby deprived of his constitutional right to a public trial. On appeal it was held that in a case of this kind where the evidence was likely to be of an immoral and disgusting nature, the court had not erred in excluding the public, but that friends of the defendant who desired to be present, or officers of the court and members of the bar ought not to be excluded. The case apparently rests upon the ground that there is no presumption of injury and that the defendant should have made it clear that authorized persons were excluded, and perhaps have requested their presence.

³ See *Weston v. Higgins* (1855), 40 Me. 102; *Chambless v. Livingston* (1905), 123 Ga. 257, 51 S. E. 314. The action in the nature of trover for the conversion of shares of stock differs from the common law action of trover only in the character of property involved, *Payne v. Elliot* (1880), 54 Cal. 339, 35 Am. Rep. 80.

⁴ *Pollock and Pollock v. The National Bank* (1852), 7 N. Y. 274; *Magee v. Scott* (1851), 9 Cush. (Mass.) 148, 55 Am. Dec. 49; *Hanson v. Spring Valley Water Co.* (1911), 16 Cal. App. 17, at p. 25, 116 Pac. 298.

¹ (Dec. 22, 1914), 144 Pac. 784.